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non-payment. But in the absence of a showing as to the seriousness of the damage suffered by him, or as to the probability of further breaches by the defendant, the plaintiff is not privileged to refuse further deliveries, and has no right to damages based on the assumption of further non-performance by the defendant. The rule should be the same even where the Sales Act has not been adopted.

CRIMINAL LAW—INSANITY—EFFECT OF INSANITY AT TIME OF TRIAL.—The defendant, who was not represented by counsel, was convicted of an assault with intent to rape. Later a lawyer was secured, who moved for a new trial, alleging that the defendant was insane at the time of trial. The trial court offered to submit the question of present insanity to a jury, under a code section relating to insanity supervening after conviction, but declined to hear evidence to show that the defendant was insane when tried as a ground for granting a new trial on the original indictment. *Held*, that the trial court should have heard and considered the evidence, and if it appeared that the defendant was insane when tried, should have granted a new trial. *Gardner v. State* (1917, Tex.) 198 S. W. 312.

As suggested by the court, reversal of the first trial was warranted by an objection more fundamental than that of newly discovered evidence, namely, that the insanity of the appellant avoided the former proceedings. Nor, it would seem, does the objection really depend on the fact that he could not be held to know of his insanity so as to plead it as a defense. It is elementary that a man cannot legally be tried, or convicted, or sentenced, while in a state of insanity. 1 Bishop, *Criminal Law*, sec. 396; 1 Wharton, *Criminal Law*, sec. 58 *et seq.* Where the question of present insanity is raised before trial, the usual procedure is to present the question to the trial jury. *Frith's Case* (1790) 22 How. St. Tr. 307. But other procedure may be adopted in the discretion of the court. See *Freeman v. People* (1847, N. Y. Sup. Ct.) 4 Den. 9. It is for the court to determine whether there is sufficient evidence to warrant submission of the question to the jury. *Spann v. State* (1872) 47 Ga. 549. And the determination of this question is not reviewable on appeal. *Webber v. Commonwealth* (1888) 119 Pa. 223. The question of present insanity may be raised at any stage of the trial, and the court must receive any evidence offered but may dispose of the issue as it sees fit. *State v. Reed* (1889) 41 La. Ann. 581. The approved course seems to be to submit the special issue with the general issue to the jury. The instant case is novel in that it appears to be the first in which the question of insanity at the time of trial was not raised until later. But there are cases holding that where it appears after trial that the defendant was deaf and dumb, or intoxicated, and therefore incapable of understanding the proceedings, the trial will be set aside. *Regina v. Berry* (1876, Cr. Cas. Res.) 1 Q. B. D. 447; *Taffe v. State* (1861) 23 Ark. 34.

DAMAGES—BREACH OF CONTRACT—DAMAGES RESULTING FROM DEATH OF WIFE.—In consideration of one dollar deducted monthly from the plaintiff's wages, the defendant company agreed to provide him and his family with medical attention. The plaintiff's wife having become ill, the plaintiff sent for the company's doctor. He refused to attend her. The plaintiff brought an action for breach of contract, and, alleging that he could not afford to engage another doctor, claimed damages for the death of his wife. *Held*, on demurrer, that the plaintiff had a cause of action. *Owens v. Atlantic Coast Lumber Corp.* (1917, S. C.) 94 S. E. 15.